

## Small Business Administration

## § 108.1200

absence of such board members, fees must be reasonable when compared with amounts paid to outside directors of similar companies. Fees may be in the form of cash, warrants, or other payments. At least 50 percent of any such fees paid to your Associate by a Small Business for service by the Associate as a board member must be allocated back to you for your benefit.

(e) *Transaction fees.* (1) You or your Associate may charge reasonable transaction fees for work performed such as preparing a Small Business for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Fees may be in the form of cash, notes, stock, and/or options. At least 50 percent of any such fees paid to your Associate by a Small Business for transactions work done by the Associate must be allocated back to you for your benefit.

(2) Your Associate may charge market rate investment banking fees to a Small Business on that portion of a Financing that you do not provide.

(f) *Recordkeeping requirements.* You must keep a record of hours spent and amounts charged to the Small Business, including expenses charged.

[67 FR 68503, Nov. 12, 2002]

### Subpart J—SBA Financial Assistance for NMVC Companies (Leverage)

#### GENERAL INFORMATION ABOUT OBTAINING LEVERAGE

#### § 108.1100 Type of Leverage and application procedures.

(a) *Type of Leverage available.* You may apply for Leverage from SBA in the form of a guarantee of your Debentures.

(b) *Applying for Leverage.* The Leverage application process has two parts. You must first apply for SBA's conditional commitment to reserve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. See §§ 108.1200 through 108.1240.

(c) *Where to send your application.* Send all Leverage applications to SBA, Investment Division Office of New Mar-

kets Venture Capital, 409 Third Street, SW., Washington, DC 20416.

#### § 108.1120 General eligibility requirement for Leverage.

To be eligible for Leverage, you must be in compliance with the Act, the regulations in this part, and your Participation Agreement.

#### § 108.1130 Leverage fees payable by NMVC Company.

There is no fee for the issuance of Debentures by a NMVC Company.

#### § 108.1140 NMVC Company's acceptance of SBA remedies under § 108.1810.

If you issue Leverage, you automatically agree to the terms and conditions in § 108.1810 as it exists at the time of issuance. The effect of these terms and conditions is the same as if they were fully incorporated in the terms of your Leverage.

#### MAXIMUM AMOUNT OF LEVERAGE FOR WHICH A NMVC COMPANY IS ELIGIBLE

#### § 108.1150 Maximum amount of Leverage for a NMVC Company.

The face amount of a NMVC Company's outstanding Debentures may not exceed 150 percent of its Leverageable Capital.

#### CONDITIONAL COMMITMENTS BY SBA TO RESERVE LEVERAGE FOR A NMVC COMPANY

#### § 108.1200 SBA's Leverage commitment to a NMVC Company—application procedure, amount, and term.

(a) *General.* Under the provisions in §§ 108.1200 through 108.1240, you may apply for SBA's conditional commitment to reserve a specific amount and type of Leverage for your future use. You may then apply to draw down Leverage against the commitment.

(b) *Applying for a Leverage commitment.* SBA will notify you when it is accepting requests for Leverage commitments. Upon receipt of your request, SBA will send you a complete application package.

(c) *Limitations on the amount of a Leverage commitment.* The amount of a Leverage commitment must be a multiple of \$5,000. SBA, in its discretion, may

determine a minimum dollar amount for Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(d) *Term of Leverage commitment.* SBA's Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by SBA.

**§ 108.1220 Requirement for NMVC Company to file financial statements at the time of request for a draw.**

(a) If you submit a request for a draw against SBA's Leverage commitment more than 90 days since your submission of an annual Form 468 or a Form 468 (Short Form), you must:

(1) Give SBA a financial statement on Form 468 (Short Form); and

(2) File a statement of no material adverse change in your financial condition since your last filing of Form 468.

(b) You will not be eligible for a draw if you are not in compliance with this section.

**§ 108.1230 Draw-downs by NMVC Company under SBA's Leverage commitment.**

(a) *NMVC Company's authorization of SBA to guarantee securities.* By submitting a request for a draw against SBA's Leverage commitment, you authorize SBA, or any agent or trustee SBA designates, to guarantee your Debenture and to sell it with SBA's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of \$5,000. SBA, in its discretion, may determine a minimum dollar amount for draws against SBA's Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(c) *Effect of regulatory violations on NMVC Company's eligibility for draws—*

(1) *General rule.* You are eligible to make a draw against SBA's Leverage commitment only if you are in compliance with all applicable provisions of the Act and SBA regulations (i.e., no unresolved statutory or regulatory violations) and your Participation Agreement.

(2) *Exception to general rule.* If you are not in compliance, you may still be eligible for draws if:

(i) SBA determines that your outstanding violations are of non-substantive provisions of the Act or regulations or your Participation Agreement and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with SBA on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) *Procedures for funding draws.* You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (see also § 108.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 (Long Form) in accordance with § 108.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form).

(3) A statement certifying that to the best of your knowledge and belief, you are in compliance with all provisions of the Act and SBA regulations (i.e., no unresolved regulatory or statutory violations) and your Participation Agreement, or a statement listing any specific violations you are aware of. Either statement must be executed by one of the following:

(i) An officer of the NMVC Company;

(ii) An officer of a corporate general partner of the NMVC Company;

(iii) An individual who is authorized to act as or for a general partner of the NMVC Company; or

(iv) An individual who is authorized to act as or for a member-manager of the NMVC Company.

(4) A statement that the proceeds are needed to fund one or more particular Small Businesses or to provide liquidity for your operations. If required by SBA, the statement must include the name and address of each Small Business, and the amount and anticipated closing date of each proposed Financing.